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CAUSE NO. 12,764

THE STATE OF TEXAS	§	IN THE DISTRICT COURT OF
	§	
VS.	§	TITUS COUNTY, TEXAS
	§	
BILLY JOE WARDLOW	§	76TH JUDICIAL DISTRICT

STATEMENT OF FACTS

VOIR DIRE EXAMINATION

November 14, 1994

VOLUME 19 of 43 volumes

FILED IN
COURT OF CRIMINAL APPEALS

OCT 11 1995

Troy C. Bennett, Jr., Clerk

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VOLUME 19

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VOIR DIRE EXAMINATION

November 14, 1994

VOLUME 19 of 43 volumes

Before Honorable Gary R. Stephens
Judge by Judicial Assignment
(Venue changed from Morris County, Texas)

APPEARANCES

ATTORNEYS FOR THE STATE OF TEXAS:

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and

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1 ATTORNEYS FOR THE DEFENDANT:

2 MR. BIRD OLD, III
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4 P.O. Box 448
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5 and

6 MR. LANCE HINSON
7 Law Offices of Danny Woodson
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Mt. Pleasant, Texas 75456-0399

1 On the 14th day of November, 1994, the
2 above-entitled and numbered cause came on for hearing
3 before said Honorable Court, Judge Gary R. Stephens of
4 Midlothian, Texas, serving by judicial assignment in the
5 District Court of Titus County, Texas, on change of venue
6 from Morris County, Texas, and the following proceedings
7 were had:

8
9 (The following occurred outside the
10 presence and hearing of any potential juror:)

11
12 THE COURT: On the record.

13 MR. TOWNSEND: We have agreed
14 to excuse 26, who was "Newman" and 28, "Theo Blaylock."

15 THE COURT: That was my
16 recollection but just to be sure for the record; Mr. Old,
17 did you and Mr. Wardlow agree to excuse Theo Blaylock,
18 juror 28 along with juror 26 who was -- what was that
19 name?

20 THE BAILIFF: "Newman."

21 THE COURT: "Newman?"

22 MR. OLD: Was Newman here last
23 Thursday?

24 THE COURT: I think somebody
25 was here.

1 MR. TOWNSEND: He was here but
2 I don't think we ever talked to him.

3 THE DEFENDANT: He never came
4 in.

5 MR. OLD: I thought we
6 eliminated 27 and 28.

7 MR. TOWNSEND: No, Your Honor.

8 THE COURT: 27 I understand
9 has been out of town or going to be out of town.

10 MR. OLD: I thought we
11 eliminated them on the record last week.

12 THE COURT: I do not recall.
13 I did not make a note of it, I did not make a note either
14 in my notes or on the sheet themselves.

15 We can refer back to the record and find
16 out.

17 MR. OLD: He's not here, it
18 was my recollection we excused both 27 and 28, 27 being
19 a "one" and 28 being a "three."

20 THE COURT: Do you agree to
21 excuse Blaylock, a "three" today?

22 She is here, she is 76.

23 MR. TOWNSEND: Yes. She is
24 76.

25 MR. OLD: We would excuse her,

1 if it's on the record we excuse 27, we would like to have
2 him excused.

3 The Reporter can check.

4 THE COURT: 27 was not excused
5 on the record.

6 Are you still agreeing to excuse Theo
7 Blaylock?

8 MR. OLD: Yes.

9 THE COURT: Mr. Wardlow, do
10 you agree?

11 THE DEFENDANT: Yes.

12 THE COURT: Mr. Townsend?

13 We are going to check with the record.

14 MR. TOWNSEND: He can't be
15 here anyway.

16 THE COURT: Yes. That's fine.

17 Tell Blaylock that she is excused and
18 bring out Owsley.

19
20 (The following occurred in the presence
21 and hearing of the potential juror:)

22
23 THE BAILIFF: Have a seat up
24 there and watch your step.

25

1 NELL COMBS OWSLEY, Potential Juror #370,
2 was called as a Potential Juror and, having been
3 previously sworn by the Court, testified as follows:

4
5 THE COURT: Good morning. How
6 are you, ma'am?

7 THE POTENTIAL JUROR: Good
8 morning.

9 THE COURT: Go ahead if you
10 would and just take your seat right there, all those
11 papers are lined up.

12 Ma'am, would you state your name for the
13 record as soon as you get settled in?

14 THE POTENTIAL JUROR: Let me
15 get my glasses on so I need to see.

16 THE COURT: You probably will.

17 "Dortha Neill Owsley, juror 29."

18 Ma'am, I'm Gary Stephens, I am presiding
19 over this jury selection and trial in this case.

20 There are two District Attorneys working
21 on this case, the one that is present with us today is
22 the District Attorney from Morris County, Mr. Richard
23 Townsend.

24 MR. TOWNSEND: Hello.

25 THE POTENTIAL JUROR: Hello.

1 THE COURT: We have two
2 Defense Attorneys, we have Mr. Bird Old, III.

3 MR. OLD: Hello.

4 THE COURT: And Mr. Lance
5 Hinson.

6 MR. HINSON: Good morning.

7 THE COURT: Next to Mr. Hinson
8 is the person charged, Billy Joe Wardlow.

9 Now, ma'am, the lawyers have read your
10 questionnaire and they are familiar with your answers,
11 they are going to discuss some of those answers and they
12 are also going to be talking to you about principles of
13 law involved in a death penalty case.

14 You will be asked a lot of questions.

15 In order to put you on the jury, in
16 order to be on any criminal jury you must be able to
17 understand and follow the law but the ability to follow
18 the law doesn't necessarily mean that you would be an
19 appropriate person in a death case.

20 We are going to explain the law to you
21 then we are going to ask questions to find out whether
22 you can follow that law but knowing whether you can or
23 can't follow the law doesn't always tell us whether this
24 is a task that you should undertake.

25 So we want to know something about your

1 feelings, something about your opinions on the law that
2 we are going to discuss.

3 There's no right or wrong answers and
4 there's no right or wrong opinions, ma'am. You don't
5 have to try to guess what kind of answers we want and
6 supply them. We want your answers, we want to know how
7 you think and feel and the only way we can find out is
8 to ask questions and hope that you just share your
9 opinions without worrying about what we may think about
10 them because what we think about your opinions are
11 immaterial, it's your opinions that are important, we
12 want you to share them with us.

13 Ma'am, the trial will not begin until
14 after the first of the year, it should begin the first
15 week of January.

16 When the trial does begin it will last
17 probably close to two weeks.

18 Do you know of any reason you could not
19 sit for two week period as a juror if chosen in January
20 of '95?

21 Do you have any questions before we
22 proceed?

23 THE POTENTIAL JUROR: No.

24 THE COURT: Okay. Mr.
25 Townsend.

VOIR DIRE EXAMINATION

BY MR. TOWNSEND

Q Ms. Owsley, I am Richard Townsend and I represent the State of Texas in this case and I'm the District Attorney in Morris County.

Mr. Lee who is with me part of the time is not here today to help me.

As the Judge said, there's no right or wrong answer to any of these questions that either I or the other side of the table will ask. We are just simply seeking answers as you know from your prior jury service and when the Judge talked to you this is a capital murder case, the State, we are actively seeking the death penalty against the Defendant in this case, Mr. Wardlow.

Now, I have read your questionnaire and I know you probably don't remember what all you put on there now but I have read your questionnaire and understand that you -- there I believe I understand your feelings about the death penalty what you said basically was you felt it was appropriate in some murder cases and that you could return a verdict in a proper case which assessed the death penalty, is that the way you still feel?

A Correct.

1 Q Okay. Now, Ms. Owsley, a lot of people think
2 in a death penalty case if a person is found guilty that
3 they automatically are going to receive the death
4 penalty. That's not really the case in Texas.

5 In Texas a person is found guilty of
6 capital murder then the jury after hearing some more
7 evidence do what we call the punishment hearing, we'll
8 decide the proper sentence as a life sentence or death
9 penalty depending on their answer to some Special Issues
10 and we will talk to you a little later.

11 But what I would like to know from you
12 right now; is there any reason if the State showed you
13 an appropriate case and an appropriate defendant for the
14 death penalty that you couldn't do it, that you couldn't
15 vote in such a way that they would receive the death
16 penalty if you felt it was appropriate? Could you do
17 that?

18 A If I felt like the evidence proved that he was
19 a threat to society I don't think I would have a problem.

20 Q Okay. Your feelings about the death penalty,
21 are those feelings that you have had ever since you were
22 an adult or is that something that maybe has changed over
23 the years?

24 I know it's probably -- not something
25 that you have thought about a lot?

1 A Well, the way I feel about the death penalty
2 and a lot of people think the person that is on the jury
3 is actually the one that is sentencing this person but
4 in my opinion that is not right. If evidence is produced
5 that in fact without a shadow of a doubt that they did
6 it that person chose at that point in time to his fate.

7 That is my belief.

8 Q Let me talk to you a little bit about the type
9 of murder in Texas; in Texas we have what I call "plain
10 murder" or non-capital murder which is the situation
11 where someone has intentionally caused the death of
12 another individual or knowingly caused the death of
13 another individual and that is to say it was done, they
14 did it, they didn't have the legal excuse like self
15 defense or it was an accident or anything like that.
16 They just intentionally caused another person's death.

17 The most a person can be punished for
18 that in Texas is 99 years to life in prison.

19 However, we have a different type murder
20 that we call "capital murder" that the most severe
21 sentence that a person can receive for that is the death
22 penalty or they can receive a life sentence, those are
23 the only two choices that the jury would have if they
24 found a person guilty of capital murder.

25 And that type of murder is like the

1 murder we just talked about where someone has
2 intentionally caused someone's death plus something else.
3 And that plus something else is that the murder was a
4 murder of a policeman or a fireman killed while in the
5 line of duty, there are several other situations such as
6 multiple murders or murder done during the commission of
7 a robbery or burglary or rape, something like that.

8 If you will, there is a sheet of paper
9 up there, I think it's marked "Exhibit 3" and it's a copy
10 of the indictment in this case.

11 THE BAILIFF: Right there.

12 (Indicating)

13 MR. TOWNSEND: If you will
14 just read over that then we will talk about it.

15 Okay. Ms. Owsley, can you see where if
16 the State could prove everything in that indictment that
17 rather than just being a "plain murder" as I called it
18 that would be a capital murder because you have got the
19 murder as well as it was done during the commission of
20 a robbery?

21 Are you with me on that?

22 THE POTENTIAL JUROR: Yes.

23 Q (BY MR. TOWNSEND) And then if a person is
24 found guilty of capital murder and, Ms. Owsley, we'll be
25 talking basically about capital murder in general this

1 morning, not this case in particular -- but if a person
2 is found guilty of capital murder in Texas the punishment
3 is either a life sentence or the death penalty.

4 And the kind of jurors that we have got
5 to have in a capital murder case in order for a person
6 to be qualified to be on the jury they have got to be
7 able to follow the law.

8 And when I say that; they have got to
9 be able to keep an open mind as to whether the punishment
10 should be a life sentence or the death penalty and you
11 are going to hear evidence during the trial as to the
12 guilt or innocence of the defendant then later on you
13 will hear, assuming if the defendant were found guilty,
14 you would hear more evidence during the punishment
15 hearing that would help you make your decision as to
16 whether the defendant should receive a life sentence or
17 the death penalty.

18 The kind of jurors that we have got to
19 have are those kinds of jurors that can keep an open mind
20 until they have heard all the evidence before deciding
21 whether the life sentence was more appropriate or the
22 death penalty was more appropriate.

23 Could you do that?

24 A I believe that I could.

25 Q Okay. Ms. Owsley, the way you and I talk and

1 the way most people say, "We believe we could" or "We
2 think we could" or "I don't believe I could do that" or,
3 you know, what I really need is, "Can you do it?"

4 A Well, this --

5 Q I know you don't know the fact situation yet.

6 A Just let me say this; this has been a traumatic
7 summer for me, I was the one that hit the little Hispanic
8 boy on South Jefferson, you know.

9 Q When did that happen?

10 A That happened the 14th day of July.

11 And of course when the accident happened
12 I thought I had killed the child. There wasn't anything
13 I could have done to prevent it because he ran out in
14 front of the car.

15 Q Yes.

16 A And I did everything I could.

17 Fortunately, it just fractured his skull
18 but he did have to be air lifted to Parkland and was over
19 there.

20 And then when he came home we had to go
21 through therapy so, you know, when I looked at that child
22 and saw that I, you know, could have killed that child
23 my mental -- this summer -- and then I lost my mother the
24 25th of August after being in the nursing home for six
25 years.

1 And it's really been a traumatic year
2 and I just really feel that I am under -- I am taking
3 medication and I, you know, I just really don't know if
4 you people would want a juror like me or not.

5 Q Is the medication you take, are you still able
6 to concentrate on -- do you work, ma'am?

7 A No. I am retired.

8 Q You are retired?

9 Does the medication you take impair your
10 ability to concentrate?

11 A No. It's not a tranquilizer.

12 Q Okay. Would you be able to -- let me ask you
13 this; first, is the little boy okay?

14 A He's doing fine.

15 Q Okay.

16 A I have kept in touch.

17 Q There's nothing about that that is worrying you
18 to any extent right now?

19 A Well, I'm not worried about it but I feel like
20 probably in the near future that we will be sued, you
21 know.

22 Q Did you have insurance?

23 A Yes.

24 Q Okay. Let me ask -- just ask you this, whether
25 -- it's the situation with the, you know, we need a juror

1 who can concentrate on hearing the evidence and
2 concentrate on the trial, would you be able to, you know,
3 and I -- when I say this we don't expect you to put all
4 these problems that you may have had out of your mind,
5 we are not saying that but would you be able to
6 concentrate on the evidence when it's time to concentrate
7 on it and give it the attention it needs as far as
8 sitting as a juror if you are selected or would that --
9 these other things just completely negate, prohibit your
10 ability to concentrate?

11 A I have made great progress in letting go of
12 both my mother's death and this accident without
13 forgetting about it but I have let it go.

14 Q Okay. That's kind of what I was asking.

15 Of course we don't expect you to forget
16 and we know that you could not do that but it -- you
17 don't believe it would impair your ability to concentrate
18 on what we are doing here in the courtroom?

19 A No.

20 Q Okay. But anyway, back to where I was, we have
21 got to have the type jurors who can keep an open mind
22 during the entire trial and decide that issue of whether
23 an appropriate sentence should be a life sentence or the
24 death penalty.

25 And when I say that, we have had jurors

1 and I have talked to jurors in the past who would say
2 either "I don't believe in the death penalty, I don't
3 care what the evidence is, I will not give anybody the
4 death penalty."

5 You see, they are not a qualified juror
6 because they are not keeping an open mind to both sides.

7 On the other hand, we have had jurors
8 that would say, "If I find a person guilty of capital
9 murder I don't need to hear that evidence during the
10 punishment hearing. I'm going to give them the death
11 penalty."

12 You see, that juror is not qualified,
13 either because they are not keeping an open mind in
14 listening to this evidence in the punishment hearing
15 before making their decision.

16 Do you believe that you could keep an
17 open mind and listen and consider all the evidence before
18 making your decision?

19 A Yes.

20 Q Bearing in mind, Ms. Owsley, that in a capital
21 murder trial it goes in two phases, first you are going
22 to hear evidence of the guilt and innocence of the
23 defendant, basically "Did he do it" then the jury then
24 would go back and decide that issue.

25 Then later on if he were found guilty

1 then you would go back and decide the issue of whether
2 the appropriate sentence should be life or death so
3 that's two separate phases.

4 A Yes.

5 Q Ms. Owsley, there's a sheet of paper up there
6 that looks like this, if you will just kind of look at
7 it and I will talk to you a little bit -- that's what I
8 call the "flow chart", a chart of how a capital murder
9 case goes.

10 You start up at the guilt or innocence
11 part there at the very beginning of the trial, you will
12 hear evidence and after you have heard all that evidence
13 that pertains to the guilt or innocence of the defendant
14 then the jury decides whether he was guilty or not
15 guilty.

16 If they decide that he's not guilty then
17 of course the trial ends there and everybody goes home.

18 If, on the other hand you find that he's
19 guilty they are going to the next phase here in the
20 middle of the page where it says "Punishment", you are
21 going to hear more evidence and that evidence is not
22 going to be about -- it won't at all be about the guilt
23 or innocence that in that particular case because --
24 because you have already decided this evidence that you
25 -- there is going to be evidence that relates to what the

1 proper punishment should be.

2 It might be evidence of prior family
3 background of the defendant, prior criminal history of
4 the defendant, prior bad acts by the defendant,
5 psychiatric evidence, psychological evidence, testimony
6 about the religious background of the defendant, it might
7 be just any number of things that you might hear that
8 would relate to the issue of whether a life sentence or
9 a death penalty should be more appropriate.

10 And the kind of juror that we have got
11 to have is those that will be able to listen to that
12 evidence and consider it and then make their decision.
13 That's not too make -- not to say that you have to buy
14 into everything you hear, you can listen to it and
15 consider it and decide whether "I don't think that is
16 very important" or "That doesn't mean anything to me" or
17 "That is important", you know, you make those decisions.

18 But we have to have jurors that will be
19 willing to listen to that evidence and consider it and
20 then decide what weight to put on it.

21 Could you do that?

22 A I could.

23 Q Okay. After you have heard all that evidence
24 -- a jury in a capital murder case does not hear all that
25 evidence and then go back and say, "How many want a life

1 sentence, how many want the death penalty", you never
2 actually make that decision exactly that way but what you
3 do is you go back and you answer two Special Issues
4 numbers or questions -- and I will go over those with you
5 in just a minute -- but if you would just bear with me
6 until we go over those.

7 But first, on that Special Issue #1 you
8 are going to vote either "Yes" or "No" on that.

9 If you vote "Yes" on it -- excuse me
10 -- first, if you vote "No" on it then the defendant will
11 automatically receive a life sentence, if you vote "Yes"
12 on it then you are going to go to Special Issue #2.

13 Special Issue #2 is another question
14 that you are going to answer "Yes" or "No."

15 If you answer that question "Yes" then
16 the defendant would receive a life sentence, if you
17 answer the question "No" the defendant would receive the
18 death penalty.

19 When I say "you" I don't mean you as an
20 individual but the jury as a whole.

21 So even though you are not saying the
22 person gets the life sentence or the person gets the
23 death penalty you are going to know if you answer Special
24 Issue #1 "Yes" and Special Issue #2 "No" that the
25 defendant is going to receive the death penalty and you

1 are also going to know if you answer those questions any
2 other way that he will receive a life sentence.

3 Are you with me on that?

4 A Yes.

5 Q Now, I know you don't know what those questions
6 are and we'll go over that at this time.

7 There is a sheet of paper up there
8 marked on the top, it says "Special Issues", do you have
9 that? (Indicating)

10 A Yes.

11 Q Okay. Read it if you will to yourself, Special
12 Issue #1, and then I will talk to you about that.

13 Okay. That's that first Special Issue
14 and it sort of relates to future dangerousness of the
15 defendant and that's something you mentioned a little
16 earlier, "If you thought he was a threat to society" and
17 that's kind of what that first Special Issue is about.

18 Would you agree with me on that?

19 A Yes.

20 Q Okay. There's a couple of things -- and I want
21 to point out to you about that one is, you know, in a
22 criminal case the State has to prove to you beyond a
23 reasonable doubt that the defendant committed the crime.

24 Well, in this Special Issue #1 the State
25 also has to prove that to you beyond a reasonable doubt,

1 we have got to prove to you beyond a reasonable doubt
2 that he -- that there is a probability that he will be
3 a threat to society.

4 Another thing I want to point out to
5 you is that word "probability."

6 "Probability" has been defined by Texas
7 state law as being "more likely than not."

8 Is that about what your definition of
9 "probability" would be, pretty close to that, sort of be
10 like 51 percent would be "probability", 49 percent
11 wouldn't be?

12 A Yes.

13 Q Okay. So if the law says that "Probability is
14 more likely than not" is that something that you could
15 follow and not have any problems?

16 A Yes.

17 Q So, see, the State is required to prove this
18 beyond a reasonable doubt but we are not required to
19 prove that we can guarantee that he would commit another
20 criminal act of violence. We are not required to predict
21 that he would commit a criminal act of violence in the
22 future, just that it's more likely than not that he
23 would.

24 Another part I want to call your
25 attention where it says "criminal acts of violence", of

1 course the defendant would be on trial for capital murder
2 but there are many other criminal acts of violence that
3 are -- besides capital murder, you know, attempted
4 murder, assault, aggravated robbery, aggravated rape,
5 things of that nature are criminal acts of violence even
6 though they are not capital murder.

7 Are you with me on that?

8 A Yes.

9 Q Of course there are crimes also that even
10 though they are against the law they are not considered
11 "acts of violence" such as forgery, theft, you know,
12 things of that nature. Even though they are crimes they
13 are not violent crimes so we have got to be able to prove
14 to you that he would commit some criminal act of violence
15 irregardless of what sort of criminal act of violence
16 that was.

17 Are you with me on that?

18 A Yes. I am.

19 Q The last words say "that would constitute a
20 continuing threat to society."

21 "Society" as you and I think of it day
22 to day is out there on the street and in our home like
23 this, is that kind of what you think of?

24 A Yes.

25 Q But "society" as it is defined in the law

1 includes the penitentiary so -- and when I say that, if
2 you decided that it's probable that he would commit a
3 criminal act of violence in the future but you thought
4 that that criminal act of violence might take place in
5 the penitentiary, well, that's still part of society
6 because after all those people are part of our society,
7 the criminals are there, the guards, the doctors and
8 nurses, people like that. They are considered part of
9 society, too.

10 So on Special Issue #1 the important
11 part to remember is that you found the defendant guilty
12 of capital murder.

13 When you go to consider what your answer
14 should be on Special Issue #1 you can certainly go back
15 to that evidence you heard during the trial and give that
16 consideration but you have also got to be willing to
17 listen and consider that evidence that you heard during
18 the punishment phase of the hearing and kind of consider
19 it all before making your decision what you think the
20 appropriate answer should be on Special Issue #1.

21 Could you do that?

22 A Well, I think I could.

23 Q Okay. Well, I know this is all new, Ms.
24 Owsley, and do you know of any reason that you couldn't
25 do that?

1 A No.

2 Q Okay. Then you get down to Special Issue #2
3 and if you will read that to yourself and it's a little
4 bit confusing -- read that to yourself and then we'll
5 talk about it.

6 A All right.

7 Q Okay. That second Special Issue is not like
8 the first Special Issue in that we don't have to prove
9 that to you beyond a reasonable doubt, that is just sort
10 of left to your own opinion and basically what it's
11 saying is you found the person guilty of capital murder,
12 you decided that Special Issue #1, he is likely to be a
13 danger to society, now you have got to decide is there
14 something about this case that I've heard in the evidence
15 or something about this defendant that is sufficiently
16 mitigating to me that makes me feel as if the appropriate
17 sentence should be a life sentence rather than the death
18 penalty.

19 And, you know, I can't tell you what
20 "sufficiently mitigating evidence" might mean to an
21 individual, it varies from one person to another but, you
22 know, -- and it can be anything you have heard during the
23 first part of the trial or during the punishment hearing
24 that you would consider sufficiently mitigating or that
25 mitigating -- term "mitigating evidence" is the evidence

1 that reduces the defendant's moral blameworthiness.

2 So basically when you say "sufficiently
3 mitigating" you are talking about sufficiently reduces
4 the blame, doesn't excuse his behavior but sufficiently
5 reduces that person's blame to the point that you think
6 a life sentence would be more appropriate than the death
7 penalty.

8 And that could be any kind of evidence.

9 Some people if they had evidence during
10 the trial presented by the State or Defendant that
11 indicates that the defendant was intoxicated when he
12 committed the crime, some people might say that doesn't
13 make any difference, it's still his responsibility while
14 someone else sitting on the jury might think if he hadn't
15 have been intoxicated this wouldn't have happened.

16 So you can see where different people
17 might feel differently about this.

18 Or it could be evidence of a rough
19 childhood, some people would reduce his blame for that
20 reason, some people would reduce the blame for just any
21 number of various reasons you might think of.

22 And of course you can choose not to
23 reduce the blame but basically if you answer "Yes" to
24 that you are saying, "Yes, I found something in the
25 evidence that I find sufficiently mitigating that makes

1 me believe a life sentence is more appropriate."

2 If you answer "No" you are saying,
3 "Well, I have listened to all this evidence during both
4 parts of the trial but I just don't see anything there
5 that could help reduce his blame."

6 When I say "reduce his blame" it also
7 has to be sufficiently reduced -- or reduced -- "I don't
8 see anything that sufficiently reduces his blame to me
9 that makes me think he should receive a life sentence,
10 I still think he should get the death penalty."

11 If you have answered that question after
12 you have answered Special Issue #1 -- of course your
13 answer to both issues are after you have heard the guilt
14 and innocence evidence and you have heard all the
15 evidence during the punishment hearing -- my question to
16 you is this; you told us a little bit earlier that if you
17 felt like the person had committed a capital murder and
18 you felt like they were "a continuing threat to society"
19 I believe is what you said, that you might believe the
20 case was appropriate for the death penalty?

21 A Yes.

22 Q Okay. Well, let's base -- let's just assume
23 that you found a person guilty of capital murder, let's
24 assume that you have answered Special Issue #1 "Yes", if
25 you have done that you have basically said what you said

1 a little earlier which is found him guilty and found that
2 he's a threat to society.

3 Could you keep an open mind even after
4 you found him guilty and even after you found him a
5 threat to society, could you keep an open mind and go
6 back and reconsider all that evidence before deciding
7 what your answer was to Special Issue #2?

8 A Yes.

9 Q Okay. And that's what -- what we are really
10 requiring of you is that you at each phase, you go back
11 and reconsider the evidence and make your decision on
12 each issue separately and not just say, "Well, I have
13 heard the evidence and I think he needs the death penalty
14 so I'm going to answer this 'Yes'."

15 You see, what we need, we have got to
16 have qualified jurors who can answer those Special Issues
17 if the appropriate answer in their mind, whether it be
18 "Yes" or "No", and just what we call, just "Let the chips
19 fall where they may."

20 If the appropriate answer gives him a
21 life sentence that's what he gets, if the appropriate
22 answer gives him the death penalty that's what he gets.

23 Could you do that?

24 A Yes.

25 Q Okay. Another thing to keep in mind, Ms.

1 Owsley, is that sufficiently mitigating evidence, it
2 could come from the State, it does not necessarily have
3 to come from the Defense side of the table. You might
4 hear something through one of our witnesses that would
5 make you think like, you know, if it was one of our
6 witnesses talked about he was intoxicated and that was
7 important to you, you know, but irregardless of where the
8 evidence comes from, the State or comes from the Defense
9 or comes from a psychiatrist or preacher or whoever it
10 comes from the important thing is that you are willing
11 to listen and consider whoever is up there on the witness
12 stand and then decide whether that is important or not.

13 Could you do that?

14 A Yes, sir.

15 Q Just basically keep an open mind?

16 A Yes.

17 Q Okay.

18 THE COURT: You have used 27
19 minutes.

20 MR. TOWNSEND: Thank you, Your
21 Honor.

22 In Texas, Ms. Owsley, I believe before
23 deciding what the appropriate punishment was in this case
24 and answering those Special Issues you would have a set
25 of instructions from the Judge.

1 And I believe those instructions would
2 tell you that in deciding what the appropriate punishment
3 should be you should not consider parole in any way.

4 When I say that what I mean is in Texas
5 if a person is found guilty of capital murder as in this
6 situation he would be eligible for parole after 35
7 calendar years and at the end of that 35 calendar years
8 that does not mean that he would receive parole but he
9 could receive parole because -- because he would be
10 eligible for it, it could be that he received a parole
11 at the end of 35 years, it could be that he never
12 receives parole.

13 What the jury is required to do is while
14 that is probably something that you couldn't put out of
15 your mind the jury is required not to use that in
16 connection of what their answer should be to Special
17 Issue #1 or Issue #2, basically just say, "I'm going to
18 consider a life sentence a life sentence and the death
19 penalty the death penalty, I am not going to worry about
20 parole stuff because there's nothing I can do about
21 that."

22 Could you basically not use parole in
23 your consideration as how you could answer those Special
24 Issues?

25 THE POTENTIAL JUROR: Yes.

1 Q (BY MR. TOWNSEND) Okay. Let me shift gears
2 a little bit and talk to you just in general, criminal
3 laws that relate to capital murder cases and also other
4 type cases; the punishment range in a murder I told you
5 couldn't receive the death penalty for just a plain
6 murder, the punishment range in a murder is from five
7 years probation up to 99 years or life in the
8 penitentiary.

9 Of course murder takes on many different
10 types of situations from very vicious type crimes all the
11 way to the type crimes we might call a mercy killing.

12 Are you familiar with what a mercy
13 killing might be?

14 A Yes.

15 Q In that range of punishment in order to be a
16 qualified juror you have got to be able to consider the
17 full range of punishment from five years probation up to
18 99 years or life.

19 And that is not to say, "Well, I would
20 give somebody 99 years to life" or "I would give somebody
21 five years probation" but that you would consider both
22 ends of the spectrum and everything in between.

23 Could you do that?

24 A Yes.

25 Q And of course that depends on the facts of the

1 case, you know, as to how you would make your
2 determination on that.

3 Let's say, for instance Ms. Owsley, that
4 we have proved to you in this case that the Defendant was
5 guilty of murder but we didn't quite prove the robbery
6 beyond a reasonable doubt.

7 Then it would be your duty as a jury to
8 find the defendant not guilty of capital murder but
9 guilty of murder because, you see, we didn't prove that
10 murder and robbery, we just proved the murder.

11 Could you do that?

12 A Well, I think so.

13 Q Did you understand what I'm saying?

14 If we have got to prove the murder and
15 the robbery, if we proved the murder but didn't prove the
16 robbery then you would have to find him guilty -- not
17 guilty of capital murder?

18 A Right.

19 Q Because we didn't prove the murder and robbery?

20 A Right.

21 Q But since we did prove the murder you would
22 still find him guilty of murder?

23 A Right.

24 Q In that situation the defendant would be
25 eligible for anywhere from five years probation -- and

1 I'm not talking about this case but any capital murder
2 case where the murder was proven but the other element
3 wasn't, then you are looking at from five years probation
4 to 99 years to life sentence.

5 To follow the law you have to be able
6 to listen and consider the evidence before deciding and
7 consider that full range of punishment.

8 Could you do that?

9 A Yes. I think you would have to.

10 Q Certainly.

11 We are required to prove our case beyond
12 a reasonable doubt. And of course that is not beyond all
13 doubt but it is beyond a reasonable doubt and that's a
14 burden that we accept going in. We know that's our
15 burden.

16 Are you familiar with that burden of
17 proof?

18 A Yes.

19 Q Is that something that you are comfortable with
20 and feel it's appropriate?

21 A Yes.

22 Q You know, in a capital murder, Ms. Owsley, we
23 are required to prove that the murder took place
24 intentionally, in a regular murder it can be knowingly
25 or intentionally but let's say we proved the murder was

1 done knowingly but we didn't prove it was done
2 intentionally and we also proved the robbery, we haven't
3 proved an intentional murder, we have only proved a
4 knowing murder, that won't fit -- under the law that's
5 not capital murder, you would have to find the defendant
6 not guilty of capital murder but again guilty of murder.

7 Could you do that?

8 Are you with me on that?

9 A Say that again.

10 Q Okay. If a person is found guilty of capital
11 murder they must be found to be -- of having
12 intentionally -- caused the death of the individual
13 intentionally?

14 A Okay.

15 Q Let's just say they didn't do it intentionally
16 or the State failed to prove to you beyond a reasonable
17 doubt that they did it intentionally. Let's say that we
18 only proved to you that they -- that it was done
19 knowingly and not intentionally.

20 There is not a whole lot of difference
21 in those terms but there is some difference between
22 intentionally and knowingly.

23 A I guess that's what I'm having a problem with.
24 I don't see that much difference in it.

25 MR. TOWNSEND: "Knowingly"

1 -- Your Honor, do you have the definition there?

2 THE COURT: I don't think I
3 have a penal code up here.

4 MR. TOWNSEND: I hate to give
5 a definition.

6 THE BAILIFF: Do you have one,
7 Bird?

8 MR. OLD: (Handed to the
9 Court.)

10 THE COURT: Okay. Ma'am, I
11 will read the definition of "intentional" then I will
12 read you the definition of "knowingly."

13 THE POTENTIAL JUROR: Okay.

14 THE COURT: "A person acts
15 intentionally or with intent with respect to the nature
16 of his conduct or to a result of his conduct when it is
17 his conscious objective or desire to engage in the
18 conduct or cause the result.

19 A person acts knowingly or with
20 knowledge with respect to the nature of his conduct or
21 to circumstances surrounding his conduct when he is aware
22 of the nature of his conduct or that the circumstances
23 exist.

24 A person acts knowingly with or with
25 knowledge with respect to a result of his conduct when

1 he's aware that his conduct is reasonably certain to
2 cause the result."

3 "Intentional" takes more of a mind-set,
4 "I want to kill you" and I do.

5 "Knowingly, I may do it, is a dangerous
6 act, not intend to kill but if I engage in that dangerous
7 act it kills", then I could be guilty of knowingly
8 killing you, not intentionally doing it.

9 So it's a state of mind.

10 THE POTENTIAL JUROR: Thank
11 you.

12 MR. TOWNSEND: Okay. In a
13 capital murder we have to prove that the death was caused
14 intentionally.

15 Say you decide we didn't prove that to
16 you beyond a reasonable doubt, we only proved to you
17 beyond a reasonable doubt that he killed the person
18 knowingly, you would have to find the defendant guilty
19 -- not guilty of capital murder because we didn't prove
20 intentional but guilty of knowingly committing murder
21 which would be murder but not capital murder.

22 Could you do that?

23 THE POTENTIAL JUROR: Yes.

24 I just feel like, you know, for me to
25 convict somebody of a capital murder it would have to be

1 proven.

2 Q (BY MR. TOWNSEND) Yes.

3 A Beyond a shadow of a doubt.

4 Q Okay. Okay. I talked to you a moment ago
5 about the burden of proof. The burden of proof in a
6 criminal case, that kind of led into something, we are
7 talking about the burden of proof is -- is that the State
8 has to prove our case, we have got to prove the defendant
9 guilty, he doesn't have to prove his innocence.

10 Are you comfortable with the law being
11 that way?

12 A Right.

13 Q Along with that goes the Fifth Amendment
14 privilege and the Fifth Amendment privilege to the
15 Constitution says he can't be required to testify in a
16 criminal case unless he chooses.

17 Is that something that is okay with you?

18 A Right.

19 Q Okay. When I say that the important part is
20 that we have got to prove our case, they don't so
21 therefore you should not and cannot follow the law if you
22 hold it against him in any way because he doesn't testify
23 if that -- if that's his choice.

24 Of course human nature again, that is
25 something that you can't put completely out of your mind

1 because human nature says, "I would like to hear what
2 he's got to say" or "I would like to hear his version"
3 and that's okay to have those thoughts in the back of
4 your mind. But when you go to consider the guilt or
5 innocence you have got to be able to set that aside and
6 not give that consideration in any way.

7 Could you do that?

8 A Yes.

9 Q Okay. And that's the same way with the
10 punishment phase of the hearing, you know, during that
11 punishment phase when you are listening to evidence and
12 wanting to decide what the proper answer should be to
13 Special Issue #1 and Issue #2 you might prefer it or
14 might -- it might appeal to you if the defendant took the
15 stand and said, "Hey, I'm sorry."

16 But again, that Fifth Amendment
17 privilege says he has the right to choose not to take the
18 stand.

19 If he did not take the stand even during
20 that punishment phase in order to follow the law you have
21 got go not hold that against him in any way in deciding
22 the answer to Special Issue #1 and Issue #2.

23 Could you do that?

24 A Yes.

25 Q You are going to hear testimony in any criminal

1 trial from all sorts of witnesses, they might be police
2 officers or ministers or psychologists or might even be
3 someone you know. The important part about it is that
4 no matter who that witness is that you start them out at
5 the same place on the track and not give anybody a head
6 start in your believing them just because you know them
7 or just because they are a police officer or just because
8 they are a minister but first listen to their evidence
9 and consider it and then decide whether their evidence
10 was important, unimportant, believable, not believable.

11 Are you following me?

12 A Yes.

13 Q Could you do that and give everybody a fair
14 shake?

15 A Yes.

16 Q The indictment in a criminal case is a copy of
17 -- that is what you looked at a little earlier and I
18 think the Judge told you several weeks ago that the
19 indictment is not evidence of anything. That is not
20 evidence in a criminal trial at all. You would have to
21 be able to not to consider it in any way in deciding your
22 verdict.

23 Could you do that?

24 A Yes.

25 Q Okay. Oftentimes in criminal trials you will

1 be presented with statements or confessions by the
2 defendant.

3 If you receive the -- a confession, have
4 it read to you or given a copy of it and it was presented
5 into evidence, I believe the Court will instruct you that
6 before you can use that confession as evidence in the
7 crime in any way you have got to find beyond a reasonable
8 doubt that that confession is truthful and voluntary.

9 And so my question is this; let's just
10 suppose that you found -- when I say "voluntary" I mean
11 under the legal "voluntary", you know, legally a
12 statement is not voluntary of course if it is coerced,
13 if the person was beaten up to give a confession then
14 that is not voluntary, under certain situations if the
15 defendant was not read his Miranda Rights -- are you
16 familiar with Miranda Rights, that's the right to
17 remain --

18 A Right.

19 Q -- the police officers on TV?

20 A Right.

21 Q When they read them the little card, "You have
22 a right to remain silent?"

23 A "Silent."

24 Q "Have the right to have an attorney present"
25 and that sort of thing?

1 A Yes, sir.

2 Q If they are not properly given their Miranda
3 Rights in certain circumstances that may invalidate a
4 confession, not in all circumstances but in some.

5 If for instance in a criminal trial you
6 heard a confession and you believed beyond a reasonable
7 doubt that the confession was truthful but you also
8 believe that the State did not prove to you beyond a
9 reasonable doubt that it was voluntary because there was
10 no testimony that he was ever given his Miranda Rights
11 or the testimony was that he wasn't given his Miranda
12 Rights to follow the law the Judge would instruct you
13 that you could not consider that confession in any way
14 in deciding what the proper verdict should be because the
15 confession was involuntary.

16 And again, that's one of those things
17 we could not ever expect anyone to put that completely
18 out of their mind but you have got to be able to set that
19 aside in deciding the guilt or innocence of the defendant
20 because it was not voluntarily taken.

21 Could you do that?

22 A Yes. I think so.

23 Q Okay. And when we say that keep in mind that
24 you also need to be able to not use that in considering
25 the other evidence.

1 For instance, if you had a witness that
2 testified to a certain fact that was consistent with
3 something that you heard in that confession you have got
4 to decide whether that witness is telling the truth or
5 not without referring back to that confession.

6 Could you do that?

7 A Yes.

8 Q Okay. Ms. Owsley, I have been talking to you
9 for a good while and I have asked most of the questions.

10 Do you have any questions of me or
11 anything that you feel like you need to bring up that
12 hasn't been discussed yet?

13 A Well, just one thing; I did overhear this being
14 discussed, I had a garage sale a few weeks ago and I
15 overheard two ladies talking about the trial.

16 Q Were they talking about from their personal
17 knowledge or was it from something they had seen in the
18 newspaper or do you remember?

19 A Well, it -- it was what they had heard and, you
20 know, I don't remember just everything.

21 Q Okay.

22 A But I did overhear them.

23 Q Let me ask you this; I believe you understand
24 that whatever you may have heard from them or have you
25 heard anything yourself in the newspaper?

1 A Well, yes. I read about it in the newspaper.

2 Q Do you understand that whatever you may have
3 read in the paper or whatever you may have heard these
4 ladies say whether you remember it or not very well that
5 that's not evidence?

6 I think you understand that?

7 A Right.

8 Q Could you be able to decide this case based on
9 the evidence that is presented in the courtroom and just
10 push that aside and not consider it when deciding the
11 issues in this case, could you do that?

12 A Yes. You know -- I don't think that this
13 is -- this is not anything that people enjoy doing.

14 Q Right.

15 A You know. And I --

16 Q Certainly.

17 A -- I believe it's our duty to serve our
18 community.

19 Q Right.

20 A And being a native of this community I feel
21 very close to it and -- but this is not something that
22 someone -- that I am just overjoyed about being here.

23 Q Well, ma'am, I don't know that -- I know you
24 have probably never been involved in this process before
25 but we don't get a lot of volunteers.

1 A You don't?

2 THE COURT: Normally, ma'am,
3 if somebody wants to do this we would wonder about them.

4 MR. TOWNSEND: Let me ask you
5 this, too; I noticed in your questionnaire that you
6 indicated that you knew Mr. Old?

7 THE POTENTIAL JUROR: Yes.

8 Q (BY MR. TOWNSEND) How do you know him?

9 A I am a native of Titus County and I believe
10 Attorney Old is also, aren't you?

11 MR. OLD: She and I graduated
12 from high school together.

13 THE POTENTIAL JUROR: Right.
14 We did.

15 How about that.

16 MR. TOWNSEND: Has Mr. Old
17 ever represented you in a criminal case or civil case of
18 any kind?

19 THE POTENTIAL JUROR: Has he?

20 Q (BY MR. TOWNSEND) Yes.

21 A No.

22 Q How about his father?

23 A No.

24 Q Has the other attorney representing the Defense
25 in this case, Lance Hinson, do you know Lance?

1 A I do know his parents better than I know Lance
2 or know his mother and I know his dad.

3 Q In your relationship with Mr. Old or Lance
4 Hinson either one is there anything about that that would
5 keep you from being fair and impartial in this case?

6 And when I say that I mean is there
7 anything that would make you sympathize more with their
8 side or sympathize more with my side or could you just
9 base it on the evidence and not worry about whether you
10 are making me happy or Mr. Old happy?

11 A I think I could be very --

12 Q "Very fair?"

13 A Right. Not biased.

14 Q "Unbiased?"

15 A "Unbiased."

16 Q I think you mentioned in your questionnaire
17 that you have had prior jury service but it was a good
18 long while ago?

19 A Yes. It was.

20 Q Was that on a criminal case or civil case?

21 A It was a civil case.

22 Q All right.

23 A And I was an alternate in a federal jury one
24 time.

25 Q Was this a criminal case or civil case?

1 A Civil.

2 Q Okay. So you have never served on a criminal
3 jury?

4 A No.

5 My husband has and I know what it's like
6 because they were sequestered for the whole time.

7 Q I don't know at this point, Ms. Owsley, whether
8 you would be sequestered or not for certain.

9 If you were I don't know how long a
10 period of time that would be. I wouldn't think it would
11 be a substantial period but I certainly can't say that
12 for certain.

13 Is there anything about that fact that
14 you might be sequestered that would cause you any undue
15 problem with, you know, anymore than the normal problem
16 that it would cause anyone?

17 A Well, no.

18 MR. TOWNSEND: Okay. I'll
19 pass the juror, Your Honor.

20 THE COURT: Ma'am, you got
21 here a little bit late, we are going to have to go to
22 lunch before we can finish talking to you because the
23 Defense will probably talk about the same length of time.

24 So let's take a lunch break and start
25 at five minutes 'til 1:00, start shortly before 1:00 or

1 right at 1:00.

2 We are in recess.

3

4 (Noon recess.)

5

6 (The following occurred in the presence
7 and hearing of the potential juror:)

8

9 THE COURT: Well, ma'am, are
10 you ready for another session?

11 THE POTENTIAL JUROR: I just
12 told the security man I don't think you all want me
13 because I couldn't find my way in or out.

14 THE COURT: We will give you
15 a special escort if you are on the jury.

16 THE POTENTIAL JUROR: It's
17 just like a maze.

18 THE COURT: Mr. Old, you may
19 proceed.

20

21 VOIR DIRE EXAMINATION

22 BY MR. OLD

23

24 Q Ms. Owsley, I am probably going to ask you
25 about the same questions the prosecutor asked you.

1 First, I think it's important that you
2 and I both understand the purpose of a juror and jury
3 duty and that duty arises from the oath that a juror
4 takes when he begins to try a case and what a juror is
5 asked to swear or affirm to is that in the particular
6 case he has been selected to try that as a juror "You
7 will a true verdict render according to the law and the
8 evidence so help you God."

9 And that is to render a true verdict on
10 -- on the law and on the evidence.

11 The Court will give you the law.

12 You have been on a civil jury or
13 criminal?

14 A Civil.

15 Q Did it -- did you all reach a verdict or --

16 A We did. It was --

17 Q -- do you remember at the end of the trial or
18 at the end of the evidence the Court gave you an
19 instrument called "a charge?"

20 A Right.

21 Q It was a written instruction.

22 That is the law that His Honor will give
23 you and those are the rules that you are bound by in
24 making your determination in this case. A juror is not
25 required to know law, his duty is to follow the law.

1 Now, the evidence is another matter, the
2 jury collectively is the exclusive judge of the evidence
3 of the case and you can give whatever evidence you want
4 credibility or question the credibility of any of the
5 evidence. That is you determine the facts of the case.

6 And as I think you said earlier that
7 the facts really gave the death sentence, not the jury?

8 A Well, that -- that is my opinion.

9 Q That is exactly the law in the State of Texas.
10 It is based on the answers to those Special Issues, you
11 answer the issue, one of them is to find the fact and the
12 other one maybe expresses an opinion but in doing so we
13 tell you the result of the outcome of your answer and so
14 you know the result of how you answer those questions.

15 Now, as we have talked about the
16 Judge will tell you what the law is and if you can be
17 bound -- and that you are to be bound by the law that he
18 gives you in those instructions. He may give you a
19 definition of a particular word.

20 When the Court defines a word for you,
21 say you asked "knowingly and intentionally", again, those
22 words have specific legal meaning and that's the
23 definition and it may or may not veer from what we
24 ordinarily think a word means but in many cases I guess
25 it does and as your oath implies if the Court tells you

1 a word means something you must take that definition and
2 lay aside your own definition if it's in conflict with
3 what the Court tells you a word means.

4 There is before you a page on the second
5 paragraph it has the definition of "beyond a reasonable
6 doubt."

7 And I believe I should be able to tell
8 you how it's marked and I can't find mine.

9 THE COURT: That's the wrong
10 one. To your left -- to your right, excuse me.
11 (Indicating)

12 MR. OLD: "SVDX 6."

13 THE COURT: She has it.

14 MR. OLD: Starting with the
15 full paragraph on the page "The prosecution has the
16 burden of proving", could I get you to read those next
17 paragraphs to the end of the page?

18 THE POTENTIAL JUROR: Okay.

19 Q (BY MR. OLD) When or this morning you made the
20 statement that "No one wants to do this" and that's
21 correct, no one wants to sit on the jury or any jury
22 probably.

23 But you said you "had a duty to serve
24 the community."

25 I think it's correct to say that you

1 fulfilled your duty as a citizen when you showed up about
2 a month ago for jury service. What we are doing now is
3 not determining whether you are a good citizen or not,
4 we are determining whether or not you can a true verdict
5 render in this case on the law and on the evidence.

6 I think there are laws that everyone
7 -- everyone can think up something they would change in
8 the law as they go far enough, there are things that I
9 don't think ought to be against the law and there's
10 probably things that because of my opinion I couldn't sit
11 on a jury and be fair about. That's what we are really
12 asking and because there is something in a particular
13 type case that you cannot accept does not make you a bad
14 citizen.

15 As to the definition of "reasonable
16 doubt", does that definition -- I'm not asking you what
17 it means, does that definition mean something to you?

18 A It does.

19 Q Now, you said twice this morning or maybe three
20 times that "It would have to be proven to you beyond a
21 shadow of a doubt before you could render a verdict of
22 guilty in a capital case" and that is sentence -- reach
23 a verdict that resulted in the death sentence?

24 A I believe. Yes.

25 Q Okay.

1 A Because --

2 Q Let me ask you something.

3 A Okay.

4 Q Does your -- do your words "beyond a shadow of
5 a doubt" require a greater burden of proof that is
6 defined as "beyond a reasonable doubt?"

7 A Well, I think -- I don't think that -- I don't
8 think that -- I think this could make me have some
9 questions.

10 Q Okay. I don't understand. When you say "this"
11 you are talking about the definition of "reasonable
12 doubt?"

13 A This says, the last sentence, "the kind of
14 doubt that would make a reasonable person hesitate to act
15 in the most important of his own affairs."

16 Q Okay. Is that a greater or lesser burden or
17 proof than your quote beyond a shadow of a doubt?

18 A I don't know.

19 Q In those three or four paragraphs you are
20 saying that the operative word in there or the words that
21 you come back to "act upon without hesitation in the most
22 important of your own affairs?"

23 A Yes.

24 Q As to whether or not somebody committed the
25 crime of capital murder, would you require more proof

1 than proof that would be the same type that you rely on,
2 act upon without hesitation in the most important of your
3 own affairs?

4 A Well, I -- this is something that -- that you
5 really can't give a concrete answer to I don't think.

6 Q I understand what you are saying but we are
7 entitled to your best answer and I mean the thing about
8 this is -- I will give you an example; people say they
9 are for the death penalty and they could give it and they
10 may in their mind have a frame of circumstances that they
11 could give it under. To get on a jury is a different
12 thing, I don't know how it effects you and I know before
13 you -- no one would do it voluntarily as we said this
14 morning, you would not come down here and volunteer to
15 sit on the jury nor would any sane citizen?

16 A Right.

17 Q But I mean we are trying to get the best answer
18 from you that we can and we want to be certain that you
19 are in a position to render a fair verdict.

20 I'm not picking on you.

21 A I know.

22 Q And I'm not -- and what my question really is;
23 can you render a verdict in this case on the definition
24 of "reasonable doubt" that is given you or are you going
25 to require less than that or more than that?

1 A Well, I just feel like I might have to have
2 more.

3 Q Okay.

4 MR. TOWNSEND: May we approach
5 the bench, Your Honor?

6 THE COURT: Ma'am, would you
7 mind stepping out for a moment, let me talk to the
8 lawyers for just a second.

9
10 (Off the record discussion.)

11
12 (The following occurred outside the
13 presence and hearing of the potential juror:)

14
15 THE COURT: Bring her back.

16
17 (The following occurred in the presence
18 and hearing of the potential juror:)

19
20 THE COURT: I'm sorry to ask
21 you to step out, it's just easier to talk to the lawyers
22 without you here because sometimes we have to discuss
23 certain matters of law.

24 THE POTENTIAL JUROR: And
25 maybe I just don't understand this as I should.

1 THE COURT: Well, I'm sure
2 there will be some more questions on it.

3 Mr. Old.

4 MR. OLD: Your Honor, do you
5 want --

6 THE COURT: I will be glad to.

7 Let me talk to you about it for just a
8 minute, ma'am; for over a hundred years we have never had
9 a definition of "reasonable doubt", the Court came out
10 with a definition a few years ago and they told us this
11 is the definition of "reasonable doubt." The State of
12 Texas must prove all of the elements of an offense, they
13 must prove where it happened, what happened and basically
14 how it happened beyond a reasonable doubt. They must
15 prove it. If you think something happened that's not
16 "beyond a reasonable doubt", if you believe it happened
17 but you are not sure that's not "beyond a reasonable
18 doubt."

19 But we never really had a definition.

20 To some people "reasonable doubt" might
21 be 95 percent on the scale of zero to a hundred or it may
22 be 99, you could never be convinced beyond a shadow of
23 a doubt, at least a lot of people felt that way because
24 to be beyond a shadow of a doubt is basically an absolute
25 and you would have to be a witness if you are a witness

1 obviously you would not be a juror.

2 THE POTENTIAL JUROR: Okay.

3 THE COURT: So the courts have
4 used the standard in Texas "beyond a reasonable doubt."

5 And the Court is saying in there,
6 whatever that says to you, now, I'm not going to tell you
7 how to interpret it but I'm going to tell you if you
8 require more proof than that then you are requiring a
9 burden on the State that they don't have.

10 If you require less proof to convince
11 you than that requires then you are not requiring the
12 State to prove what they must and you are kind of giving
13 the advantage to the Defense in that instance.

14 If you are requiring beyond all doubt
15 then you are imposing an unreasonable burden on the State
16 so we have to have this definition and if you are on this
17 or any other criminal jury you will be instructed this
18 definition of "reasonable doubt" is what you read.

19 If you can follow that definition and
20 not hold the State to a higher standard you are qualified
21 but if you are going to hold the State to a higher
22 standard, in other words, if you tell me "I'm going to
23 make the State prove it beyond all doubt" or "I'm sorry,
24 but this definition of reasonable doubt is not strong
25 enough, I have a higher burden in my mind before I could

1 ever convict somebody of a crime or before I could ever
2 answer questions that would result in the execution of
3 a human."

4 If that's the way you feel I don't have
5 a problem with it nor do the lawyers but we must know.

6 If you are going to hold them to a
7 lesser standard then we need to know that and you are the
8 only one that can tell us and I can't really tell you
9 what this means because my interpretation doesn't matter,
10 it's your interpretation based on the law that has been
11 set forth from the courts, if you can follow that
12 definition of reasonable doubt and feel comfortable and
13 abide by it and not make the State prove more nor let the
14 State prove less to return these answers you are
15 qualified but if you have a problem with it we need to
16 know right now.

17 THE POTENTIAL JUROR: I think
18 I understand. Right now I think I could apply this.

19 THE COURT: Here's where I am
20 going to stop you and say I need more than "think", I
21 need "Yes I can" or "No I can't."

22 It doesn't get easy, does it?

23 THE POTENTIAL JUROR: No. It
24 doesn't, it really doesn't.

25 THE COURT: Can you follow the

1 instructions and not require more of the State or would
2 you require more of the State?

3 THE POTENTIAL JUROR: As to
4 this interpretation as to state it you would actually
5 -- they would have to be a witness to -- to the crime?

6 THE COURT: To be absolutely
7 beyond any doubt.

8 THE POTENTIAL JUROR:
9 Absolutely a shadow of a doubt.

10 THE COURT: You would have to
11 be a witness.

12 If someone says, "Well, you know,
13 someone from Mars might have come down and done it", I
14 don't think that's reasonable.

15 If they say, "You know, they didn't
16 prove that everybody else in this county didn't do it so
17 maybe it was someone else", that's not reasonable.

18 It's a doubt based on reason on a
19 reasonable circumstance or a set of facts, you must feel
20 as comfortable as you can.

21 Some people have compared this to making
22 the decision to get married or making the decision if
23 it's not an accident to have a baby or to make the
24 decision whether or not to buy a house.

25 It's a very important decision and the

1 courts are trying to equate it to the juror's frame of
2 reference by saying, "You need to be as convinced in this
3 matter as you are in any of the affairs of your personal
4 life that requires a great deal of thought and
5 concentration before you make a decision."

6 THE POTENTIAL JUROR: Well,
7 I would keep an open mind. I believe that I could.

8 THE COURT: And would you
9 accept that definition and make the State prove beyond
10 a reasonable doubt to you all of the elements of this
11 offense before you would find the person guilty?

12 THE POTENTIAL JUROR: I would.

13 THE COURT: And if you do find
14 a person guilty of capital murder would you make the
15 State prove beyond a reasonable doubt that the answers
16 to the issues should be "Yes" and "Yes" before you would
17 vote "Yes?"

18 THE POTENTIAL JUROR: Yes.

19 THE COURT: Okay. Mr. Old.

20 MR. TOWNSEND: Your Honor, --

21 THE COURT: Yes, sir.

22 MR. TOWNSEND: We have talked
23 about this before off the record on different jurors in
24 such a way as to -- as a life sentence going to require
25 beyond a reasonable doubt as the -- without the death

1 penalty requiring more than that.

2 THE COURT: Ma'am, Mr.

3 Townsend has a good point; you realize based on what you
4 have been told by everyone that if you found a person
5 guilty of capital murder then you will answer some
6 questions, the answer to those questions will indicate
7 whether it's a death sentence or life sentence. The law
8 in essence says if you convict somebody of a capital
9 murder they start out with a life sentence, if the State
10 wants death then they must prove beyond a reasonable
11 doubt that, number one; he or she will be a danger in the
12 future and, number two; that he or she actually intended
13 that a death occur or anticipated that a death occurs,
14 those are the questions that we are concerned with. In
15 fact we don't -- in question two we haven't even been
16 voir diring on this other question -- forget what I
17 said -- they have to prove the answer to that first
18 question -- look at the sheet over there; if the State
19 proves "Yes" that the person will be a continuing danger
20 to society -- and "danger" means a person is going to
21 commit dangerous violent criminal acts, not just
22 nonviolent but if the person is going to commit violent
23 acts of criminal violence that will constitute a
24 continuing danger to society, if that's proven to you you
25 will answer that question but it has to be proven beyond

1 a reasonable doubt. If it's not proven beyond a
2 reasonable doubt the answer is "No."

3 If the answer is "No" it's a life
4 sentence, if the answer is "Yes" it's a death sentence
5 then you go to the next question which I'm not going to
6 talk to you about right now because the State has no
7 burden.

8 What Mr. Townsend was saying is that
9 some people would require a higher burden than beyond a
10 reasonable doubt before they could ever vote for a death
11 sentence, they would impose on the State a burden to
12 prove -- kind of like you were saying earlier "beyond a
13 shadow of a doubt" and some people may put such a higher
14 burden on the State of Texas before they could return a
15 verdict that results in a verdict of death that it would
16 be an impossible burden for the State to meet.

17 The burden is the same for guilt or
18 innocence as it is when you answer "Yes" or "No", in fact
19 the burden of proof is the State's in a traffic ticket
20 beyond a reasonable doubt, the consequences are far
21 greater here but the concepts are the same from a traffic
22 ticket to answer a question on the death penalty.

23 Would you be able to impose the same
24 burden in the first part of the trial, the guilt or
25 innocence and in the second part of the trial?

1 In other words, are you going to make
2 the State prove beyond more than just -- more than just
3 beyond a reasonable doubt before you could answer the
4 question in such a way to result in death or would you
5 maintain the same burden of proof in both the
6 guilt/innocence and punishment stage?

7 THE POTENTIAL JUROR: Well,
8 I think that still is real hard to answer until you get
9 there. I don't think when I got in the jury room if I
10 didn't feel comfortable one way or the other that I could
11 just be swayed.

12 THE COURT: You are doing
13 fine, you are doing fine.

14 You would not have to be an eyewitness
15 in order to find somebody guilty of a crime, would you?
16 You wouldn't have had to have been there and to see it?

17 THE POTENTIAL JUROR: No. If
18 I felt like the evidence -- if I was satisfied with the
19 evidence that was presented.

20 THE COURT: And would you have
21 to be convinced beyond all doubt that a person would be
22 a continuing danger before you could answer that question
23 "Yes" or would you be satisfied with the burden of proof
24 that has been established by our courts?

25 THE POTENTIAL JUROR: I think

1 I could go by this.

2 THE COURT: You "think" or you
3 "will?"

4 See, you will take an oath to follow the
5 law and that's the law.

6 THE POTENTIAL JUROR: I will.

7 THE COURT: Mr. Townsend, I
8 am convinced at this point that she does understand the
9 burden and will not impose a greater burden on the State
10 nor a lesser burden on the State than required by law.

11 MR. TOWNSEND: Thank you, Your
12 Honor.

13 THE COURT: Thank you.

14 Mr. Old.

15 MR. OLD: As you looked at the
16 indictment this morning you understand that an indictment
17 is not an inference or evidence of guilt and the fact
18 that this man has been indicted or charged with an
19 offense would not infer anything to you as to innocence
20 or guilt?

21 THE POTENTIAL JUROR: Correct.

22 Q (BY MR. OLD, CONTINUING VOIR DIRE EXAMINATION)

23 Another law that you will be confronted
24 with, you will be told that all men are presumed to be
25 innocent until proven guilty beyond a reasonable doubt,

1 do you have any problem with that law?

2 A No.

3 Q Do you presume this man to be innocent at this
4 time?

5 A Yes.

6 Q Okay. As to whether or not a defendant or a
7 person charged with a crime testifies, he has the right
8 not to, do you understand that?

9 A I do.

10 Q And as to innocence or guilt or on punishment
11 he doesn't have a burden of proof is what the law says.

12 Would you require Mr. Wardlow through
13 his attorney or in any way to prove anything to you in
14 order for you to acquit him?

15 A Yes.

16 Q You would require him to do something?

17 Now, bear in mind the State has to prove
18 him guilty beyond a reasonable doubt.

19 A Okay.

20 Q Okay. Could you find him not guilty if the
21 State didn't quite live up to that burden of proof? You
22 would hesitate a little bit? It wouldn't be like
23 making the decision to buy the house, it would be almost
24 that -- do we have to prove anything?

25 A These are real hard questions. I have never

1 encountered anything like this before and I will be
2 perfectly frank with you, it's really hard for me to give
3 a concrete answer.

4 Q You know what's terrible about it?

5 A Pardon?

6 Q Do you know what's really terrible about that?

7 A What?

8 Q The people asking you have never been in that
9 position either and I don't know.

10 Mr. Townsend, have you ever had jury
11 duty?

12 A No.

13 Q We have never been in this position and for
14 obvious reasons have not and I know -- we are not trying
15 to embarrass you.

16 A I know you are not and I know that you all are
17 doing exactly what you have to but at the same time it's
18 not easy for me to sit up here and give you a "Yes" or
19 "No" answer to everything that's asked.

20 I left this morning after Counselor
21 Townsend had questioned me and I got to thinking, you
22 know, I said "Yes" to some of those things and I got to
23 thinking, you know, do I really -- there's mixed emotions
24 about this and I think anyone that would sit up here, if
25 they didn't have mixed emotions must be something wrong

1 with them.

2 Q Let me try some more law on you, Mr. Townsend
3 spoke to you about the law of statements or confessions,
4 the first issue is when a confession of a defendant or
5 a party to a suit is offered in evidence is whether or
6 not it's voluntary and the law again has its definition
7 on or the criteria that the State must prove beyond a
8 reasonable doubt in order for that statement to be
9 admissible and it must be of his own free will and
10 voluntary and he must have been given the Miranda Rights
11 that we talked about prior to doing this and if it was
12 the subject of custodial interrogation you must make the
13 finding whether it's voluntary or not.

14 Now, let's say that as a juror that on
15 the evidence it had not been proven to you beyond a
16 reasonable doubt that the statement was voluntary, okay,
17 you believe or the evidence clearly shows that, for
18 example the officer taking the statement didn't read one
19 of those Miranda Rights to him, didn't tell him he had
20 the right to have a lawyer, didn't tell him it could be
21 used against him, one of those things, but you believe
22 overwhelmingly beyond a reasonable doubt that that
23 statement is true.

24 Now, in that situation what the Court
25 instructs you is if you find it's involuntary or it's not

1 proven to you that it's voluntary beyond a reasonable
2 doubt and true you should totally disregard that
3 statement and not let it effect your deliberations.

4 A Just as if it didn't happen?

5 Q Just as if it didn't happen, you hadn't read
6 it and, you know, you believe beyond a reasonable doubt
7 that the defendant signed the statement, it's in his
8 handwriting and because of part of the evidence it's an
9 involuntary statement, for example; the officer taking
10 the statement did not tell him that it could be used
11 against him in a Court but you still believe, you know,
12 not only beyond a reasonable doubt, perhaps to your
13 "shadow of a doubt" that the statement is true; can you
14 lay aside that statement and not consider it if the Court
15 instructs you to?

16 THE COURT: Ma'am, what Mr.
17 Old is telling you, you may have a case where you have
18 a confession that you have read and you believe it's
19 truthful, that the person that wrote it or signed it
20 meant every word and it described the crime in great
21 detail so you have absolutely no doubt that person did
22 it but then when you heard, like he said, that they
23 didn't prove that all of the man's rights were given you
24 are going to be told you can't consider it unless the
25 State proves it was voluntary. So we are assuming for

1 this conversation that the State failed to prove all the
2 warnings were given so, you know, you know based on the
3 law that you can't consider that statement but you have
4 read it and without that statement you don't have quite
5 enough proof to convince you beyond a reasonable doubt
6 that he's guilty.

7 Would you have the mental discipline to
8 disregard the fact that you know he's guilty because of
9 reading that statement and finding that person not
10 guilty?

11 That's basically what he's asking,
12 that's what it boils down to.

13 THE POTENTIAL JUROR: That's
14 what I hear. I just don't know.

15 MR. OLD: Let me -- Special
16 Issue #1 --

17 THE COURT: To your left.
18 (Indicating)

19 MR. OLD: That question kind
20 of sets to me what I call a "double burden of proof",
21 first the evidence that you arrive at in finding
22 probability must be proven beyond a reasonable doubt and
23 then there must be a probability that the defendant will
24 commit criminal acts of violence in the future and then
25 they must constitute a continuing threat to society.

1 "Probability" the law tells us means
2 "more likely than not?"

3 THE POTENTIAL JUROR: All
4 right.

5 Q (BY MR. OLD) And it's probably a poor way of
6 talking about it but 50 percent plus a grain of sand on
7 one side would be "probability", agreed?

8 A Possibly.

9 Q If "beyond a reasonable doubt" came out exactly
10 even, it was proven to you by 50 percent would you answer
11 that question "No?"

12 A Yes. I would.

13 Q You would answer it "No?"

14 A If it was 50/50.

15 Q It would have to be pushing over a
16 preponderance of the evidence from more likely than not?

17 A Right.

18 Q In arriving at a sentence, now, the event --
19 I mean the crime of what I think Mr. Townsend called
20 "ordinary murder", which is intentionally or knowingly
21 killing someone, range of punishment in that is from five
22 years probated to life.

23 Now, that is a little different for a
24 jury, a jury doesn't answer Special Issue questions like
25 this, they write down a number of years or life or 99

1 years or five years and then find probation.

2 What the Court tells you about the law
3 of parole is that you are not to consider the law of
4 parole, you are then told that the rule of law is that
5 a person convicted of capital murder in a capital case
6 must serve at least 35 real years, 365 days a year times
7 35 before he becomes eligible for parole. It doesn't
8 mean he will get parole, it means that he can apply for
9 it or be considered for it but it does not mean that --
10 there is no mandate on the Parole Board to parole that
11 person.

12 For the purposes of assessing punishment
13 what that says, you must consider life to equal life,
14 that is if you give someone a life sentence you are
15 saying that you presume that they will spend the rest of
16 their life in the penitentiary and you are not concerned
17 about the law of parole and the same would be true in a
18 non-capital case, you say whatever number of years you
19 put down, you presume they are going to spend, if it's
20 75 years, 75 years. You can't look back and say "Well,
21 if we give him 75 he will actually do this and that
22 because of the law of parole" because the rules of the
23 Parole Board change from time to time but the 35 years
24 does not.

25 Still I mean that's the law. Rules are

1 different things, the law is if you are convicted of
2 capital murder you are given a life sentence, 35 years
3 before you even become eligible.

4 Now, in either case whether it's a
5 murder case or capital case can you assess a sentence
6 without considering the law of parole?

7 A Yes.

8 Q Okay. In answer to Special Issue #1, and
9 remember Mr. Townsend told you that "society" includes
10 the penitentiary?

11 A Right.

12 Q Can you in giving a life sentence assume that
13 what that question is asking, "Do you find from a
14 preponderance of the evidence beyond a reasonable doubt
15 that there is a probability that the defendant would
16 commit criminal acts of violence that would constitute
17 a threat to the society of a state penal institution?"

18 A That's what it means?

19 Q Yeah. Is that how you read the question?

20 A Right.

21 Q So you would have assumed life equals life and
22 you would not consider the law of parole?

23 A Right.

24 Q You made a statement that you had read
25 newspaper accounts, something about this case and if I

1 understood you correctly since you were here the first
2 time you overheard a conversation about this case?

3 A Right.

4 Q Or about the facts giving rise to the case?

5 A Right.

6 Q Or what somebody said they were?

7 Did what you -- did what you heard or
8 what you have read make an impression upon you?

9 I mean that is do you recall it -- do
10 you recall what you heard or part of what you heard?

11 A Right.

12 Q Would it require evidence to remove that from
13 your mind?

14 I don't know whether that's a good
15 question or not.

16 My question really is; does that mean
17 anything to you about the evidence in this case?

18 A Well, of course it was something I overheard
19 which I think you would consider as "hearsay."

20 Q Yes.

21 A You know --

22 Q It's hearsay but I mean, you know, we all form
23 opinions?

24 A Right.

25 Q Up until yesterday afternoon about 5:30 I would

1 have strongly been of the opinion that Dallas was going
2 to beat San Francisco.

3 A Well, I was too.

4 Q And I got proven wrong. I guess that was not
5 -- my opinion was not beyond a reasonable doubt.

6 But I mean we form opinions everyday on
7 very little knowledge, all of us do. That's the way we
8 live.

9 A Yes.

10 Q Everybody has an opinion about O.J. and I'm not
11 going to ask you --

12 A Please don't.

13 Q -- my question is this; what you have heard,
14 is it going to effect your deliberation in that jury box
15 even if you hear the same thing?

16 A No.

17 Q Will the fact that you are hearing it for the
18 second time be stronger evidence than if it were the
19 first time and you hadn't heard the people talking about
20 it or read about it?

21 A Well, if it came out as actual evidence?

22 Q Let me --

23 A Okay.

24 Q -- give you an example; let's say what you
25 heard, overheard or whatever comes into play, let's say

1 you heard someone say -- and I mean I am going to
2 oversimplify this and it may not help you.

3 A You have to do this for this person.

4 Q I am simple, too.

5 You heard someone say "Everybody knows
6 the car was black, I saw it myself."

7 You get in the jury box and a witness
8 who you have never seen before, you view their
9 credibility as they sit in this witness stand testify the
10 car was black, okay, somebody else testifies the car was
11 red; is the fact that this hearsay out of court statement
12 that you heard someone say "Everybody knew the car was
13 black, I saw it myself", is that going to effect your
14 verdict in this case? Is it going to maybe create the
15 word "boot strap the evidence", make it more believable?

16 A If everybody said it was black?

17 Q No. The fact that you heard before you got
18 here that the car was black, do I have to disprove to you
19 that the car was black?

20 A No.

21 Q If the proof is one witness says the car is
22 black and the other one says the car is red, is the fact
23 that you heard it was black going to effect your verdict?
24 Is it going to make you go for black?

25 A Well, it probably wold.

1 Q You think it would?

2 You don't think you -- do you see -- the
3 law requires you to make your verdict on the evidence as
4 it comes to you.

5 A Right.

6 Q I mean --

7 A No.

8 Q -- merely having that thought is not what I'm
9 asking you, what I'm saying is; is that actually going
10 to become evidence outside of the courtroom?

11 A No.

12 THE COURT: What he's talking
13 about, like you have one witness says the car is black
14 and the other one says the car is red and you are back
15 there saying, "Well, I kind of believe both of them but
16 all my neighbors said it was black so I think I will
17 decide it was black."

18 That's what we can't have. We can't
19 have jurors base their opinions on what they heard
20 outside the Court.

21 THE POTENTIAL JUROR: That's
22 what I was saying, when you get back there in the jury
23 room if I believe something, you know, if something has
24 been presented to me one way or the other that I feel
25 strongly about and maybe we are -- we are split one-

1 fourth and three-fourths, you know, I'm not sure how
2 easily I would be swayed one way or the other.

3 THE COURT: As long as you
4 -- as long as you are swayed by what happened in the
5 courtroom that's fine. We want to make sure that a juror
6 won't take what they have heard outside the courtroom to
7 help make their mind up and that's what Mr. Old is
8 discussing with you at this point.

9 Can you tell us whatever you heard --

10 THE POTENTIAL JUROR: I can
11 dismiss it.

12 THE COURT: You will dismiss
13 it?

14 THE POTENTIAL JUROR: I will
15 dismiss it and listen to what is presented.

16 THE COURT: Thirty-two
17 minutes.

18 MR. OLD: Mr. Townsend made
19 a statement to the effect that "The State is seeking the
20 death penalty in this case."

21 Okay, now, Mr. Townsend is the District
22 Attorney of Morris County, Texas and the offense as
23 alleged happened in Morris County, Texas. He is an
24 elected official in Morris County and he's the District
25 Attorney. That is a political office and with my tongue

1 in my cheek I'm going to call Mr. Townsend "a politician"
2 which I think has got to be a dirty word in this country
3 but I don't intend it that way; now, the statement that
4 he made is his own statement, that is within the bounds
5 of his office, he's the person that decides whether or
6 not the State will seek the death penalty.

7 That does not imply that the Governor
8 called him up or the Attorney General called him up or
9 the Legislature voted on it and said, "State, seek the
10 death penalty."

11 Now, is the fact that he represents the
12 State and he through his office is asking for the death
13 penalty, does that have any credibility with you as to
14 your verdict in this case?

15 Does that make it easier for you to give
16 the death penalty, if you do, the fact that Mr. Townsend
17 says he is seeking it?

18 THE POTENTIAL JUROR: Well,
19 that's one of his duties.

20 Q (BY MR. OLD) Yes. But I mean you don't take
21 that to mean that -- "The State", after all is the people
22 of this state?

23 A Right. Right.

24 Q That's not -- you don't interpret that as being
25 the majority of the people of the State of Texas saying

1 in this particular case, "Mr. Townsend, we want you to
2 seek the death penalty?"

3 A No.

4 Q So it's his -- you understand that is totally
5 his decision as to whether or not the State asks for the
6 death penalty?

7 A Right. Yeah.

8 Q There is a document in front of you that is
9 several pages entitled "Witness List."

10 I would like for you to go over this
11 list of names and as you come to them will you tell me
12 any name that you recognize or any person that you know?

13 A There is only one name on here that sounds the
14 least bit familiar and that is "Dewayne McClung."

15 Seems like he went to school here, may
16 not have.

17 Q I think that's correct.

18 A That's the only name that rings a bell with me
19 at all.

20 Q Other than knowing the name -- and I mean if
21 you said you were raised here as I was there's a lot of
22 "McClungs" in this county, does that give him anymore
23 credibility than any other name on that list or any other
24 person who would be a witness?

25 A No.

1 Q Verbal response, please.

2 A No.

3 Q Do you know of any reason why you could not
4 give every witness -- the testimony of every witness the
5 same test for credibility?

6 A No. I don't.

7 Q I mean the fact that someone was a peace
8 officer, a preacher, a fire chief or whatever would not
9 give them more credibility because they are a peace
10 officer?

11 A I believe I could listen to each one
12 constructively.

13 Q You said that you had been on one civil jury?

14 A Yes.

15 Q Do you remember the name of that case?

16 A It has been so long ago.

17 Q What kind was it? An automobile accident case,
18 a contract case?

19 A I don't really remember but we gave a five year
20 probated sentence, that's what I recall on that.

21 Q Okay. It was a criminal case then?

22 A No.

23 What did you say?

24 Q It was a criminal case?

25 A No.

1 Q I mean you gave -- someone was charged with a
2 crime?

3 A Well, it was -- well, it was a criminal case
4 I guess.

5 I think a "crime" is just "murder",
6 okay.

7 Q Okay.

8 A Okay. Like I say, I don't remember but the
9 sentence was -- see, you all don't need me, I'm trying
10 to tell you you all don't need me because I am dumb, you
11 all.

12 THE COURT: Ma'am, I think you
13 are doing just fine.

14 THE POTENTIAL JUROR: You just
15 don't know.

16 MR. OLD: You said your
17 husband has been on a jury that was sequestered, do you
18 remember who that was?

19 THE POTENTIAL JUROR: I
20 remember distinctly who that was.

21 Q (BY MR. OLD) Who was that?

22 A I don't remember the first name, the last name
23 was "Doss."

24 Q "Doss?"

25 Was that in this county?

1 A Yes.

2 Q How long ago was that?

3 A About 30 years ago or so.

4 When I brought his clothes to him I
5 brought him a full bottle of Tylenol or aspirin, one or
6 the other and when it came home it only had about that
7 many in it. (Indicating)

8 THE COURT: You will know what
9 to bring if you are on this jury.

10 THE POTENTIAL JUROR: You are
11 not going to keep me, you are going to let me go here in
12 a minute because I'll tell you what, I got out the door
13 -- let me tell you this, now, you all, this is how
14 forgetful I am, you all need to let me go, I got out the
15 door awhile ago and I went back and kissed my husband and
16 I said, "Have I already kissed you?"

17 He said, "Yes."

18 But you are getting forgetful,
19 Counselor, because you and I didn't graduate the same
20 year and you have -- and you know yourself I am older
21 than you.

22 MR. OLD: Just a little.

23 THE POTENTIAL JUROR: No. I
24 am.

25 Q (BY MR. OLD) I am 46, you must have been a

1 class ahead of me, you are "47."

2 A I wish.

3 Q "Flattery will get you anywhere."

4 MR. TOWNSEND: I want to
5 object to the obvious attempt to prejudice the juror on
6 his behalf.

7 THE POTENTIAL JUROR: I'm
8 sorry.

9 MR. TOWNSEND: I thought she
10 looked younger than Bird.

11 MR. OLD: I agree with that.

12 THE COURT: The Court will
13 remain neutral but I would have to lean toward the
14 State's side.

15 Ma'am, let me talk to you a moment about
16 this reasonable doubt; I think during the general voir
17 dire that's when I talked to the entire group of people
18 I talked about murder as the intentional taking of a life
19 without legal justification or excuse and I might have
20 used a mercy killing where a person is on life support
21 and that life support is terminated, let's forget for a
22 moment that that could be "murder", let's assume that you
23 have a loved one on life support, a family member and
24 let's assume that the doctor has said to you that it is
25 -- that in that doctor's opinion the person will never

1 be able to come out of a coma or whatever the problem is,
2 let's take away that any crime has been committed and
3 it's left up to the family to decide.

4 Well, obviously there you would never
5 know whether or not that person would be able to live
6 without life support unless you took the life support off
7 so that's the kind of -- that is a decision where you are
8 going to have to take all of the factors and base your
9 decision on all of the reasonable factors, not emotion.

10 Emotion says "No. I can't pull his
11 plug."

12 Don't react out of emotion in trial
13 either, it's reasonable, the evidence, does the evidence
14 lead you to a conclusion that it is guilt or all of the
15 reasons that you got there reasonable and is the evidence
16 sufficient to erase any doubt that is based on reason,
17 not any at all but any doubt based on reason?

18 I don't know if that helps you or not
19 but that again would be maybe an example of trying to
20 make your decision on what is reasonable and all the
21 facts given to you and not basing it on emotion or what
22 you want to happen.

23 Now, let's take that same reasonable
24 doubt and give you an example that could come up in a
25 trial to illustrate why it is important, let's take a

1 murder case, a person has been shot and a person has been
2 stabbed.

3 The indictment says that the defendant
4 shot the victim on such and such date and killed the
5 victim, the victim died from a gunshot wound.

6 Let's just say the defendant testifies,
7 "Yeah. I shot him, I shot him 25 times, reloaded several
8 times, wanted to make sure he was dead."

9 Let's say the medical examiner testified
10 and says, "Yeah. He shot him but the knife wound is what
11 in my opinion is what killed him."

12 See, the State has not prove to you
13 beyond a reasonable doubt that the gunshot killed that
14 person. They have no evidence, they have evidence that
15 the person shot the other one, they have evidence that
16 he's dead but there's absolutely no evidence that the
17 gunshot caused the death because in fact their witness
18 says the knife caused the death.

19 Now, you know the person is guilty, you
20 know -- not "guilty", you know the person is dead, you
21 know beyond a reasonable doubt that the person on trial
22 shot the person but you don't have any proof that it was
23 a gunshot wound so, see, in that case the reasonable
24 doubt standard would not have been met and you would have
25 to find the defendant not guilty if you are to follow

1 your oath.

2 That's why it's real important that
3 jurors understand this concept. It's not what you want
4 to happen, it's "Can the State prove what they have to
5 prove to you beyond a reasonable doubt?"

6 And if they can they are entitled to a
7 verdict of guilty, if they can't then they are not
8 entitled to that verdict.

9 Do you have any questions on reasonable
10 doubt?

11 THE POTENTIAL JUROR: I don't
12 think so. When you were talking about that I have more
13 or less gone through this procedure that you talked,
14 "pulling the plug" because my mother had -- we decided
15 earlier this year that everything had been done for her
16 that could be, she had the living will.

17 THE COURT: It was not an easy
18 decision?

19 THE POTENTIAL JUROR: It was
20 not an easy decision but we had Hospice to come in and
21 when she could not swallow anymore we did not choose --
22 she did not want a feeding tube, we didn't do that, they
23 did -- they did give her an IV.

24 THE COURT: But you do not
25 -- you can't tell me, though, whether she would still be

1 alive today if you had not done that?

2 THE POTENTIAL JUROR: No.

3 THE COURT: Because you had
4 to base your decision on all the factors and it was a
5 very difficult decision, wasn't it?

6 THE POTENTIAL JUROR: It's not
7 easy.

8 THE COURT: That's what --
9 kind of what we are asking you to do in a criminal case,
10 take all the factors that you have heard, if it led you
11 to this conclusion and if it dispels all reasonable doubt
12 based on reason, not emotion, not emotion, not on desire,
13 then you do what your intelligence dictates.

14 Can you do it?

15 THE POTENTIAL JUROR: I
16 understand it. Yes.

17 THE COURT: Ma'am, if you will
18 step out I'll have a discussion with the lawyers and I
19 will let you know something. Probably you won't know
20 today whether you are on the jury.

21 I'm out of Dallas, I'm up here all week,
22 Thursday afternoon we will make decisions on the jurors
23 we have talked to today so you probably won't know until
24 Friday.

25 THE POTENTIAL JUROR: I'll be

1 out of town Friday because that's my trip.

2 THE COURT: If you are on the
3 jury you will get a letter, if you are not you will
4 probably get a phone call.

5 So if you go out of town Friday and
6 don't know anything you are welcome to call the District
7 Clerk's Office Monday when you get back and ask if you
8 were taken as a juror.

9 All right. Again, you have a good day.

10 THE POTENTIAL JUROR: All
11 right. You all, too.

12
13 (The following occurred outside the
14 presence and hearing of the potential juror:)

15
16 (Off the record discussion.)

17
18 THE COURT: Back on the
19 record.

20 Does the State have any challenges?

21 MR. TOWNSEND: None, Your
22 Honor.

23 THE COURT: Does the Defense
24 have any challenges?

25 MR. OLD: None.

1 THE COURT: Tell her she is
2 free to go and we will either send her a letter or she
3 is welcome to check back with us Monday.

4
5 (Recess.)

6
7 (The following occurred outside the
8 presence and hearing of any potential juror:)

9
10 THE COURT: Let's get on the
11 record.

12 Mr. Townsend, I understand there's an
13 agreement between you and Mr. Old to excuse juror Valerie
14 Bell, 30, and juror Lesley Sandlin, "S A N D L I N",
15 number 31, is that correct, sir?

16 MR. TOWNSEND: That's correct,
17 Your Honor.

18 THE COURT: Mr. Old, do you
19 agree?

20 MR. OLD: That's correct.

21 THE COURT: Mr. Wardlow, do
22 you agree?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Both of those
25 jurors are excused, if you will inform those jurors we

1 appreciate their service and they may leave.

2 And I guess I will see you guys in the
3 morning.

4
5 (Record closed for November 14th, 1994.)

6
7 (Whereupon Court was recessed until 9:00
8 a.m., November 15, 1994.)

9
10
11 *****

1 Certification Number of Reporter: 149

2 Expiration Date of Certification: 12/31/96

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